

1 AN ACT concerning government.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Residential Real Property Disclosure Act is  
5 amended by changing Section 70 as follows:

6 (765 ILCS 77/70)

7 Sec. 70. Predatory lending database pilot program.

8 (a) As used in this Article:

9 "Borrower" means a person seeking a mortgage loan.

10 "Broker" means a "broker" or "loan broker", as defined in  
11 subsection (p) of Section 1-4 of the Residential Mortgage  
12 License Act of 1987.

13 "Closing agent" means an individual assigned by a title  
14 insurance company or a broker or originator to ensure that the  
15 execution of documents related to the closing of a real estate  
16 sale or the refinancing of a real estate loan and the  
17 disbursement of closing funds are in conformity with the  
18 instructions of the entity financing the transaction.

19 "Department" means the Department of Financial and  
20 Professional Regulation.

21 "Exempt person" means that term as it is defined in  
22 subsections (d)(1) and (d)(1.5) of Section 1-4 of the  
23 Residential Mortgage License Act of 1987.

24 "Lender" means that term as it is defined in subsection (g)  
25 of Section 1-4 of the Residential Mortgage License Act.

26 "Licensee" means that term as it is defined in subsection  
27 (e) of Section 1-4 of the Residential Mortgage License Act of  
28 1987.

29 "Mortgage loan" means that term as it is defined in  
30 subsection (f) of Section 1-4 of the Residential Mortgage  
31 License Act of 1987.

32 "Originator" means a "loan originator" as defined in

1 subsection (hh) of Section 1-4 of the Residential Mortgage  
2 License Act of 1987, except an exempt person.

3 "Pilot program area" means all areas within Cook County  
4 designated as such by the Department due to the high rate of  
5 foreclosure on residential home mortgages that is primarily the  
6 result of predatory lending practices. The Department shall  
7 designate the pilot program area within 30 days after the  
8 effective date of this amendatory Act of the 94th General  
9 Assembly.

10 "Title insurance company" means any domestic company  
11 organized under the laws of this State for the purpose of  
12 conducting the business of guaranteeing or insuring titles to  
13 real estate and any title insurance company organized under the  
14 laws of another State, the District of Columbia, or a foreign  
15 government and authorized to transact the business of  
16 guaranteeing or insuring titles to real estate in this State.

17 (a-5) Inception date. The Secretary of Financial and  
18 Professional Regulation shall declare in writing the date of  
19 inception of the pilot program. The inception date shall be no  
20 later than September 1, 2006, and shall be at least 30 days  
21 after the date the Secretary issues a declaration establishing  
22 that date. The Secretary's declaration shall be posted on the  
23 Department's website, and the Department shall communicate the  
24 declaration to affected licensees of the Department. Until the  
25 inception date, none of the duties, obligations,  
26 contingencies, or consequences of or from the pilot program  
27 shall be imposed. The pilot program shall apply to all mortgage  
28 applications that are governed by this Article and that are  
29 made or taken on or after the inception of the pilot program.

30 (b) A predatory lending database pilot program is  
31 established within the pilot program area, effective upon the  
32 inception date established by the Secretary of the Department.  
33 The pilot program shall be in effect and operational ~~continue~~  
34 for a total of 4 years ~~after its creation~~ and shall be  
35 administered in accordance with Article 3 of this Act. The  
36 database created under this program shall be maintained and

1 administered by the Department. The database shall be designed  
2 to allow brokers, originators, credit counselors, title  
3 insurance companies, and closing agents to submit information  
4 to the database online. The database shall not be designed to  
5 allow those entities to retrieve information from the database,  
6 except as otherwise provided in this Article. Information  
7 submitted by the broker or originator to the Department may be  
8 used to populate the online form submitted by a credit  
9 counselor, title insurance company, or closing agent.

10 (c) Within 10 days after taking a mortgage application, the  
11 broker or originator for any mortgage on residential property  
12 within the pilot program area must submit to the predatory  
13 lending database all of the information required under Section  
14 72 and any other information required by the Department by  
15 rule. Within 7 days after receipt of the information, the  
16 Department shall compare that information to credit counseling  
17 standards developed by the Department by rule and issue to the  
18 borrower and the broker or originator a determination of  
19 whether credit counseling is recommended for the borrower. The  
20 borrower may not waive credit counseling. If at any time after  
21 submitting the information required under Section 72 the broker  
22 or originator (i) changes the terms of the loan or (ii) issues  
23 a new commitment to the borrower, then, within 5 days  
24 thereafter, the broker or originator shall re-submit all of the  
25 information required under Section 72 and, within 4 days after  
26 receipt of the information re-submitted by the broker or  
27 originator, the Department shall compare that information to  
28 credit counseling standards developed by the Department by rule  
29 and shall issue to the borrower and the broker or originator a  
30 new determination of whether credit counseling is recommended  
31 for the borrower based on the information re-submitted by the  
32 broker or originator.

33 (d) If the Department recommends credit counseling for the  
34 borrower under subsection (c), then the Department shall notify  
35 the borrower of all HUD-certified counseling agencies located  
36 within the State and direct the borrower to interview with a

1 counselor associated with one of those agencies. Within 10 days  
2 after receipt of the notice of HUD-certified counseling  
3 agencies, the borrower shall select one of those agencies and  
4 shall engage in an interview with a counselor associated with  
5 that agency. Within 7 days after interviewing the borrower, the  
6 credit counselor must submit to the predatory lending database  
7 all of the information required under Section 74 and any other  
8 information required by the Department by rule. Any costs  
9 associated with credit counseling provided under the pilot  
10 program shall be paid by the broker or originator. A credit  
11 counselor who in good faith provides counseling services shall  
12 not be liable to a broker or originator for civil damages,  
13 except for willful or wanton misconduct on the part of the  
14 counselor in providing the counseling services.

15 (e) The broker or originator and the borrower may not take  
16 any legally binding action concerning the loan transaction  
17 until the later of the following:

18 (1) the Department issues a determination not to  
19 recommend credit counseling for the borrower in accordance  
20 with subsection (c); or

21 (2) the Department issues a determination that credit  
22 counseling is recommended for the borrower and the credit  
23 counselor submits all required information to the database  
24 in accordance with subsection (d).

25 (f) Within 10 days after closing, the title insurance  
26 company or closing agent must submit to the predatory lending  
27 database all of the information required under Section 76 and  
28 any other information required by the Department by rule.

29 (g) ~~The~~ Upon recording the mortgage, the title insurance  
30 company or closing agent shall attach to the mortgage ~~must~~  
31 ~~simultaneously file with the recorder~~ a certificate of ~~its~~  
32 compliance with the requirements of this Article, as generated  
33 by the database. If the title insurance company or closing  
34 agent fails to attach ~~file~~ the certificate of compliance, then  
35 the mortgage is not recordable. In addition, if any lis pendens  
36 for a residential mortgage foreclosure is recorded on the

1 property within the pilot program area, a certificate of  
2 service must be simultaneously recorded that affirms that a  
3 copy of the lis pendens was filed with the Department. If the  
4 certificate of service is not recorded, then the lis pendens  
5 pertaining to the residential mortgage foreclosure in question  
6 is not recordable and is of no force and effect.

7 (h) All information provided to the predatory lending  
8 database under the program is confidential and is not subject  
9 to disclosure under the Freedom of Information Act, except as  
10 otherwise provided in this Article. Any borrower may authorize  
11 in writing the release of database information. The Department  
12 may use the information in the database without the consent of  
13 the borrower: (i) for the purposes of administering and  
14 enforcing the pilot program; (ii) to provide relevant  
15 information to a credit counselor providing credit counseling  
16 to a borrower under the pilot program; or (iii) to the  
17 appropriate law enforcement agency or the applicable  
18 administrative agency if the database information demonstrates  
19 criminal, fraudulent, or otherwise illegal activity.

20 (i) Nothing in this Article is intended to prevent a  
21 borrower from making his or her own decision as to whether to  
22 proceed with a transaction.

23 (j) Any person who violates any provision of this Article  
24 commits an unlawful practice within the meaning of the Consumer  
25 Fraud and Deceptive Business Practices Act.

26 (k) Not later than one year after the Department designates  
27 the pilot program area and annually thereafter during the  
28 existence of the pilot program, the Department shall report to  
29 the Governor and to the General Assembly concerning its  
30 administration and the effectiveness of the pilot program.

31 (Source: P.A. 94-280, eff. 1-1-06.)

32 Section 99. Effective date. This Act takes effect upon  
33 becoming law.